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An Act To Amend the Laws Regarding Custody of the Remains of Deceased Persons

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §2843-A, sub-§2, as amended by PL 2009, c. 601, §29, is further amended to read:

2. Custody and control generally. The custody and control of the remains of deceased residents of this State, dead bodies or dead human bodies are governed by the following provisions: in the following order of priority:

A. If the subject has designated a person to have custody and control in a written and signed document, custody and control belong to that person-;

B. If the subject has not left a written and signed document designating a person to have custody and control, or if the person designated by the subject refuses custody and control, custody and control belong to the next of kin-; and

C. If the next of kin is 2 or more persons with the same relationship to the subject, the majority of the next of kin have custody and control. If the next of kin can not, by majority vote, make a decision regarding the subject's remains, the court shall make the decision upon petition under subsection 4, paragraph D.

If a person who has the right of custody and control under this subsection does not exercise the rights and responsibilities of custody and control within 2 days of notification of the death of the subject or within 4 days of the death, whichever is sooner, or is unwilling to assume liability for the cost of final disposition of the remains if resources from the estate of the subject are insufficient, custody and control belong to a person from the next lower level of priority as established in paragraphs A to C.

A person who has been charged with murder, as described in Title 17A, section 201, or manslaughter, as described in Title 17A, section 203, subsection 1, paragraph B, forfeits the right of custody and control provided under this subsection and a funeral director who is aware of the charges may not release a dead body to that person. If the charges against the person are dismissed or the person is acquitted of the charges, the person regains the right of custody and control in the same position of priority established in this subsection.

Sec. 2. 22 MRSA §2843-A, sub-§8, as enacted by PL 1993, c. 609, §1, is amended to read:

8. Immunity. A party who, in good faith, acts upon the instructions of the party having custody and control is not liable for having carried out those instructions, may not be held civilly or criminally liable and is not subject to disciplinary action for acting in accordance with those instructions.

Sec. 3. 22 MRSA §2843-A, sub-§10 is enacted to read:

10. Funeral directors. The following provisions apply to the actions and liability of funeral directors, cemeteries and crematories, and their employees.

A. If there is a dispute regarding custody and control, a funeral director may refuse to accept a dead body, inter or otherwise dispose of the remains or complete funeral arrangements until the funeral director is provided with a court order under subsection 4 or a written agreement of the persons who have custody and control.

B. If there is a dispute regarding custody and control, pending a court determination under subsection 4 a funeral director who has physical possession of a dead body may embalm or refrigerate and shelter the body and may bill the estate of the subject for those costs, plus attorney's fees and court costs.

C. A person who signs a funeral service agreement, cremation authorization form or other authorization for disposition of a dead body is deemed to warrant the truthfulness of the facts set forth in the document, including but not limited to the existence of custody and control and the identity of the subject.

D. A funeral director, cemetery or crematory may rely on a funeral service agreement, cremation authorization form or other authorization signed by a person who has custody and control of a dead body and may carry out the instructions provided for in the agreement or on the form or authorization unless the director, cemetery or crematory knows of objections from another person.

E. A funeral director, cemetery or crematory is not required to independently investigate custody and control of a dead body or who is next of kin.

SUMMARY

This bill establishes an order of priority for the custody and control of the remains of a deceased person. If a person has been charged with murder or the type of manslaughter in which the person intentionally or knowingly causes the death of another, that person forfeits the right to custody and control of the remains of a deceased person. Upon the dismissal of the charges or acquittal of the person, the person resumes the position of priority granted under the law. The bill authorizes certain actions by funeral directors, cemeteries and crematories, including sheltering the remains during the pendency of a dispute over custody and control, and provides certain protections to funeral directors, cemeteries and crematories.